

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in)
his capacity as ATTORNEY)
GENERAL OF THE STATE OF)
OKLAHOMA and OKLAHOMA)
SECRETARY OF THE)
ENVIRONMENT C. MILES)
TOLBERT, in his capacity)
as the TRUSTEE FOR NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,) 4:05-CV-00329-TCK-SAJ
Plaintiffs,)
vs.)
TYSON FOODS, INC., et al,)
Defendants.)

DEPOSITION OF
DONALD DALTON

April 16, 2009

10:00 a.m.

999 Peachtree Street, N.E.
Atlanta, Georgia

Frances Buono, RPR, CCR-B-791

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1 (Off the record.)

2 (Recess from 10:50 a.m. to 11:01 a.m.)

3 Q. (By Ms. Xidis) Mr. Dalton, we marked as
4 Exhibit 3 to this deposition a document entitled
5 Poultry Water Quality Handbook. Underneath the title
6 page at the bottom it says the Poultry Water Quality
7 Consortium.

8 A. Yes.

9 Q. Are you familiar with the Poultry Water
10 Quality Consortium?

11 A. Yes.

12 Q. And U.S. Poultry & Egg Association was a
13 member of the consortium; is that correct?

14 A. Yes.

15 Q. And can you tell me how long the
16 association was a member of the consortium?

17 A. I'm not sure as to the exact accurate
18 date, but the Poultry Water Quality Consortium was
19 formed in about 1992.

20 Q. And U.S. Poultry & Egg was a member of the
21 consortium from its inception in the early '90s, is
22 that fair to say?

23 A. That's correct.

24 Q. Can you tell me why the consortium was
25 created?

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1 A. Yes. We had an individual in Alabama
2 named Sam Chapman, he was with Soil Conservation
3 Service, which is a predecessor to the National
4 Resources Conservation Service. So SCS and NSCS are
5 agencies that just changed the name.

6 But Soil Conservation Service had a good
7 history with the use of poultry litter as an amenity
8 to soils. They had had tremendous problems earlier
9 with wash-away of soils, that's the reason they were
10 soil conservationists.

11 And to use poultry litter on land to keep
12 it from washing away, they had a good bit of
13 experience.

14 They also had TVA, Tennessee Valley
15 Authority, was -- had a fertilizer plant in Muscle
16 Shoals, Alabama, where they had done work with
17 organic fertilizers.

18 When Sam came to us as a representative of
19 the SCS, and Mr. Strickland from the Tennessee Valley
20 Authority, they wanted to add their expertise to the
21 compendium of knowledge on the use of poultry litter,
22 and they knew that EPA also had some interest in it,
23 but EPA didn't have any particular expertise in the
24 use of poultry litter as a soil amenity for -- as an
25 organic fertilizer.

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1 So they felt that -- those two individuals
2 came to us at Southeastern and felt that there could
3 be a valuable consortium put together to collect and
4 assimilate information about poultry water quality.

5 Now, it wasn't limited to the use of
6 poultry litter, it was poultry water quality, in
7 general. Water coming from poultry operations one
8 way or the other.

9 So they came to Southeastern at the time
10 and proposed that this consortium be put together so
11 we could collect information about the current
12 knowledge of the use of poultry litter, or in
13 general, to work with poultry water quality.

14 After that, the extension service, USDA
15 Extension Service, also joined, and sort of the
16 official consortium was put together to do that work,
17 which the objective was to assimilate information
18 that was out there somewhere, and promote that
19 information, give it to, for example, EPA and other
20 agencies. That was the first objective.

21 The second objective was to pull together
22 people who were interested in this whole area of
23 water quality because there was a number of people
24 that didn't know how to talk to each other, they
25 didn't know who they were. Might be the Corps of

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1 Engineers, it might be a state agency from the State
2 of Georgia or Alabama or Connecticut -- not
3 Connecticut, necessarily, but Delaware, or somewhere
4 like that, and to try to get those names together to
5 see who were the players of interest in poultry water
6 quality.

7 The organization was NRCS when it got more
8 formally developed. National Resource Conservation
9 Service of the USDA was the -- provided an employee.
10 They actually went to -- however they do it in the
11 agency -- and had a designated employee to head up
12 this consortium.

13 TVA's role in it was -- at that time they
14 had the fertilizer plant in Muscle Shoals, and they
15 also had offices in Chattanooga that they could
16 contribute to this effort.

17 And EPA joined in with some, in-kind,
18 moneys and activities to be a part of it. And U.S.
19 Poultry's part was to provide some funds, outside of
20 those agencies, so that we could conduct the work
21 that was needed, maybe have some meetings or whatever
22 the need was.

23 The first few years we didn't spend any
24 money. We had designated money, but it wasn't called
25 for. And then later on as it begin to develop a

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1 little bit, that commitment that we had was up to an
2 amount, and I can look it up, but up to an amount of
3 money that we would contribute to the Poultry Water
4 Quality Consortium to be a collector of this body of
5 knowledge and players so that we might get all of
6 that together. And that's the reason it was formed.

7 I guess that's my answer.

8 Q. Okay. And I believe there were four main
9 members of the consortium; is that correct?

10 A. There were four original members.

11 Q. Original members.

12 A. That was SCS, or Soil Conservation
13 Services turned into NRCS, U.S. Poultry & Egg,
14 Tennessee Valley Authority, and the Environmental
15 Protection Agency of the U.S. government.

16 Q. And then --

17 A. And then it expanded after that to
18 extension and others.

19 Q. A few minutes ago when you were explaining
20 the objectives and goals of the consortium, you
21 mentioned that -- tell me if I'm getting your words
22 wrong -- but it was to gather information that was
23 out there on the topic of water quality related to
24 the poultry industry.

25 A. Right.

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1 Q. Did U.S. Poultry & Egg contribute to that
2 body of knowledge and provide information to the
3 consortium?

4 A. I don't have a clear answer to that. If
5 U.S. Poultry & Egg Association had research in any
6 particular area, it's published on our website, but
7 there may have been some of that information that we
8 funded that was included in the handbook. It should
9 have been, anyway, if it wasn't, or considered.

10 Actually the handbook, if you look at it,
11 it was produced by the NRCS, the personnel that were
12 there. Mr. Larry Goff was the head of that. So --
13 and these that you have given me are not
14 U.S. Poultry, you -- you didn't get them from
15 U.S. Poultry, you got them from someone else,
16 apparently.

17 Q. That's correct. Does the consortium
18 continue to exist today?

19 A. No, it doesn't. The funding from NRCS,
20 because of reorganization of that whole government
21 agency, fell apart and they withdrew the funding in,
22 I want to say 2003, or thereabouts. And they
23 withdrew the funding and the agency went away.

24 I don't know what happened to the
25 employees or what have you, but they probably

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1 our board of directors. So in that sense, yes,
2 we represented the board of directors.

3 Q. (By Ms. Xidis) Did the Poultry Water
4 Quality Consortium consider the views of industry on
5 the issues of water quality in its work?

6 MR. SANDERS: Object to form.

7 MR. WALKER: Object to form.

8 THE WITNESS: I don't know how all the
9 material was gathered by Larry -- his resources
10 or his sources, so I couldn't answer that
11 question -- he's the one that gathered the
12 information, so I would have to rely on him to
13 say who he -- or how he got it.

14 It was a body of information out there,
15 and he went to a lot of government agencies and
16 research facilities. The universities had data
17 and research, et cetera, that they had.

18 I think he collected it from practically
19 -- well, anybody that might be able to
20 contribute to that body of knowledge.

21 Q. (By Ms. Xidis) And that was Larry, I'm
22 sorry, what was --

23 A. Larry Goff. He was the employee furnished
24 by NRCS to run the consortium, to be the full-time
25 employee of the consortium. Now, he wasn't the first

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1 one, but that's --

2 Q. Did the consortium gather information from
3 the U.S. Poultry & Egg Association in working on this
4 Poultry Water Quality Handbook?

5 A. If we had the information, we made it
6 available to them. I would have to look through and
7 see if there's -- if you will notice, the way it's
8 put together, each one of these sort of issue things
9 has a reference material at the back of it.

10 And Larry would write this up as a summary
11 of those references, which were research -- primarily
12 researchers or data collectors. And that's where he
13 got -- that's where he got most of his information,
14 if not all of it. And it shows the reference to each
15 one of these as being the source of his summary of
16 what was in those references.

17 That's the way it was put together, I want
18 you to understand.

19 Q. Did you or anyone else at the U.S.
20 Poultry & Egg Association review this document before
21 it was finalized, or contribute to drafts?

22 A. Contribute to the draft, yes. For
23 example, if it were on certain subjects, we had
24 Dr. Charlie Beard, for example, at Southeastern. If
25 it was in his area of expertise, Larry Goff might

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1 A. It was done out of Tennessee and
2 Chattanooga by the consortium.

3 Q. And who is the intended audience for the
4 handbook?

5 A. Our original objective, and I think it was
6 achieved by Larry Goff, but our original objective
7 was to widely distribute this handbook to anyone as
8 we gathered names of people who were interested in
9 the poultry water quality aspect of things, that we
10 would send them a book. All they had to do was
11 contact Larry and he would send them a book.

12 How many we sent out, I couldn't tell you
13 in terms of when I say we, I mean in the consortium,
14 sent out, but those were sent out of Chattanooga.

15 And the intent was to widely distribute
16 it. If people were interested, here's a compendium
17 of information, some of it gathered from, like I say,
18 from the universities or other purported experts, for
19 your interest. If you're interested in it, here's
20 what we have been able to collect.

21 And also at some point, I don't know, we
22 had a list of names of, I would suspect a couple
23 hundred or whatever, of people who might be
24 interested in this. Those were people, if I'm not
25 mistaken, that had asked for the handbook, including,

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1 perhaps, EPA and government agencies and that sort of
2 thing.

3 Q. When you said "we had a list of names,"
4 you're referring to the U.S. Poultry & Egg
5 Association --

6 A. No, I'm talking about --

7 Q. -- about the consortium?

8 A. -- about the consortium had a list of
9 names. That was part of the objective originally was
10 to find out who's interested, get them talking
11 together so that everybody had the same kind of
12 information.

13 We knew that EPA didn't have any experts
14 in the area, and that's the reason EPA joined, they
15 wanted to know more than they obviously knew at the
16 time about it, and that was the objective.

17 So we did -- we being the consortium --
18 collect people who were interested and send them a
19 book. Now, I can't verify whether it was sent or not
20 because I wasn't in charge of sending it, but that
21 was the objective of the organization.

22 Q. Other than the creation of this handbook,
23 did the Poultry Water Quality Consortium do other
24 activities, such as hold workshops or meetings?

25 A. Not in terms of formal workshops. With

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1 necessarily, reflect the opinions of the individual
2 members of the association?

3 A. I would say no, not necessarily. We might
4 present a position to the board of directors and have
5 an objection to it from some member --

6 Q. So simply because the U.S. Poultry & Egg
7 Association takes a position, doesn't mean that the
8 individual members, necessarily, agree with that
9 position. Would that be accurate?

10 A. That's correct.

11 Q. To your knowledge, has the -- strike that.
12 Has the Poultry Water Quality Consortium
13 ever taken the position that there should be a
14 complete ban on the use of poultry litter as
15 fertilizer?

16 A. I don't know the answer to that.

17 Q. It was my understanding from your prior
18 testimony that this Poultry Water Quality Handbook
19 was a collection of various materials that existed at
20 the time that the handbook was put together; is that
21 correct?

22 A. That's correct.

23 Q. So would you agree that the size
24 underlying nutrient management and litter application
25 changes over time?

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1 A. Well, there's probably an ever-improving
2 body of work that I guess would -- restate the
3 question, maybe I can...

4 Q. I guess what I'm getting at, the Poultry
5 Water Quality Handbook that's Exhibit 3 contains the
6 body of knowledge that existed at the time that it
7 was put together?

8 A. That's correct.

9 Q. There's a second edition of this handbook
10 that was Exhibit 5?

11 A. Yes.

12 Q. Okay. I assume that the second edition
13 was necessary because there was some kind of change
14 in that body of knowledge, would that be accurate?

15 A. I believe that's accurate, yes.

16 Q. And continuing that forward, that body of
17 knowledge will continue to change and continue to
18 improve, would you agree with that general statement?

19 A. Yes.

20 Q. So that the information that's contained
21 in the Poultry Water Quality Handbook may not now be
22 accurate. Would that be a correct statement? Or
23 might not reflect the most recent science on those
24 issues addressed in the handbook?

25 A. Not being a scientist, I'm not sure I'm